

# The Corporation Trust Company Journal

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The Corporation Trust Company  
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INCORPORATION UNDER THE LAWS OF DELAWARE has steadily increased during recent years. In 1912, Delaware granted charters to about 260 corporations having a capital of a million dollars or more; Maine granted 110; New York, 80; New Jersey, 36, and Virginia, 20. The Allis-Chalmers Manufacturing Company was recently organized under the laws of Delaware with a capital of \$42,500,000. This company will take over the property and business of the Allis-Chalmers Company, a New Jersey corporation.

Through the courtesy of Messrs. Guthrie, Bangs & Van Sinderen, we print herewith a copy of the charter of the new company.

CERTIFICATE OF INCORPORATION  
OF  
ALLIS-CHALMERS MANUFACTURING COMPANY.

I. The name of the corporation shall be Allis-Chalmers Manufacturing Company.

II. The principal office of the corporation in the State of Delaware is to be located in the City of Wilmington in the County of Newcastle. The name of its resident agent is The Corporation Trust Company of America, having an office in said City of Wilmington. The corporation may have offices at West Allis and Milwaukee in the State of Wisconsin, at Chicago in the State of Illinois, or elsewhere, and the stockholders and directors shall have power to hold their meetings and keep the books, documents and papers of the corporation outside of the State of Delaware at such places as may from time to time be designated by the by-laws or by resolution of the stockholders or directors, except as otherwise required by the laws of Delaware.

III. The nature of the business proposed to be transacted or carried on and the objects or purposes to be promoted are as follows:

To manufacture, purchase and sell all kinds of machinery and engines and parts thereof and materials and supplies of all kinds connected therewith.

To manufacture iron, steel, manganese, coke, copper, lumber and other materials, and all or any articles consisting wholly or partly of iron, steel, copper, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use and develop any lands containing coal, iron, stone, manganese, copper and other ores, oil, or minerals, and any woodlands or other lands for any purpose of the corporation.

To mine or otherwise extract or remove coal, iron, stone, manganese, copper and other ores, oil, minerals and timber from any lands owned, acquired, leased or occupied by the corporation or from any other lands.

To buy and sell or otherwise deal in or traffic in iron, steel, manganese, copper, stone, ores, coal, coke, oil, minerals, wood, lumber and other materials and any of the products thereof and any articles consisting wholly or partly thereof.

To construct bridges, buildings, ships, boats, railroads, locomotives, cars and other equipment, docks, slips, elevators, water-works, gas-works, electrical-works, viaducts, aqueducts, canals and other water-ways and other means of transportation, and to sell or otherwise dispose of the same.

To apply for, obtain, register, acquire by purchase, lease or otherwise, and to hold, own, use, operate, introduce, sell, assign or otherwise dispose of any trade-marks, trade-names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States, or elsewhere; and to use, exercise, develop, grant licenses

in respect of or otherwise to turn to account any such trade-marks, trade-names, patents, inventions, improvements, processes, licenses and the like, or any such property or rights.

To acquire by purchase, subscription or otherwise, and to hold or to dispose of shares of the capital stock and bonds or any other obligations of any corporation formed for, or then or theretofore engaged in, or pursuing any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or obligations of any such corporation, so far as the same may be lawfully acquired.

To hold for investment, or otherwise to use, sell or dispose of, any stocks, bonds or obligations of any such other corporation; to aid in any manner any corporation whose stocks, bonds or other obligations are held or are guaranteed by this corporation, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stocks, bonds or other obligations, and while owner of any such stocks, bonds or other obligations to exercise all the rights and voting powers and other privileges appurtenant to the ownership thereof.

To acquire such property, rights and good will, including the whole or any part of the assets, and in connection therewith assume or guarantee such liabilities, of any person, firm, association or other corporation as this corporation may lawfully acquire or assume, and to pay for the same in cash, stock or bonds of this corporation or otherwise.

The corporation shall have power to conduct any part of its business in other States and in the Territories and Colonies of the United States and in foreign countries, and to hold, purchase, mortgage and convey real and personal property in such other States, Territories, Colonies, or foreign countries.

IV. The amount of the total authorized capital stock of the corporation is to be forty-two millions, five hundred thousand dollars (\$42,500,000), divided into four hundred and twenty-five thousand (425,000) shares of the par value of one hundred dollars (\$100) each, of which shares one hundred and sixty-five thousand (165,000) shares, amounting in the aggregate to sixteen millions, five hundred thousand dollars (\$16,500,000), par value, are to be preferred stock, and two hundred and sixty thousand (260,000) shares, amounting in the aggregate to twenty-six millions dollars (\$26,000,000), par value, are to be common stock.

The holders of preferred stock are to be entitled to receive when and as declared by the board of directors, from the surplus or net profits of the corporation, cumulative fixed yearly dividends payable quarterly at the rate of five (5) per cent. per annum for the two years from and after January 1, 1913, and at the rate of six (6) per cent. per annum for the two years from and after January 1, 1915, and at the rate of seven (7) per cent. per annum from and after January 1, 1917, and such additional amount, if earned and declared in and for any year between January 1, 1913, and January 1, 1917, as shall make the total dividend for such year equal to seven (7) per cent., but such additional amount shall not be cumulative. Dividends on the preferred stock at the rates above mentioned shall be payable before any dividend on the common stock is either paid or made payable or set apart. If for any year cumulative dividends at the fixed rate payable for such year as aforesaid shall not be declared and paid on said preferred stock, the deficiency shall be payable before any dividend shall thereafter be made payable upon or set apart for the common stock. Whenever all dividends payable on the preferred stock shall have been declared and paid or made payable, and the accrued instalments of dividends for the current year shall have been declared and the funds therefor set apart, the board of directors may declare dividends on the common stock payable then or thereafter out of the remaining surplus or net profits. In the event of any liquidation or dissolution of the corporation, whether voluntary or otherwise, the holders of preferred stock shall be entitled to preference and to be paid in full both the par value of their shares and all unpaid cumulative dividends accrued thereon before any

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amount shall be paid to the holders of common stock; and after the payment of the par value of the preferred stock to the holders thereof and all accrued and unpaid cumulative dividends thereon, the remaining assets shall be divided and paid to the holders of the common stock according to their respective shares.

The corporation shall not create any mortgage lien upon its property as long as any of its preferred stock remains outstanding unless the holders of at least eighty (80) per cent. in amount of such preferred stock shall give their consent thereto, either in writing or by vote at a duly notified meeting specially called for the consideration of the subject, but during the continuance of any voting trust under which preferred stock shall be deposited and held, for which stock voting trust certificates shall be outstanding, the consent in writing of holders of a like amount of voting trust certificates for such preferred stock shall be required.

A majority of the whole board of directors, as from time to time constituted, shall be elected by the holders of the preferred stock.

The preferred stock may be redeemed by the corporation on the first day of January, April, July, or October in any year at one hundred and ten per centum of the par value thereof, together with all accrued and unpaid cumulative dividends to the date of redemption, upon such terms and conditions and such prior notice as the board of directors shall deem sufficient.

The amount of capital stock with which the corporation is to commence business shall be one hundred thousand dollars (\$100,000), of which fifty thousand dollars (\$50,000) shall be preferred stock and fifty thousand dollars (\$50,000) shall be common stock.

V. The names and places of residence of each of the original subscribers to the capital stock and the number of shares of stock to which they have severally subscribed are as follows:

Names.	Post Office Address.	Number of shares.	
		Preferred Stock.	Common Stock.
Francis S. Bangs.....	44 Wall St., N. Y. City....	200	200
James P. Winchester.....	Wilmington, Del.....	200	200
William J. Maloney.....	Wilmington, Del.....	100	100

VI. The corporation shall have perpetual existence.

VII. The private property of the stockholders shall not be subject to the payment of the debts of the corporation to any extent whatever.

VIII. The number of the directors of the corporation shall be fixed by the by-laws. The number of the directors may be increased as may be provided in the by-laws. In case of any increase of the number of directors, the additional directors shall be elected, as may be provided in the by-laws, either by the directors, or by the stockholders at an annual or special meeting. In case of a vacancy in the board of directors through death, resignation, disqualification, or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, shall elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, other than the original or duplicate stock ledger, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors, or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, and from time to time may amend or repeal any by-laws, but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any

special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore mentioned, for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of an Act of the State of Delaware entitled, "An Act Providing a General Corporation Law" (approved March 10, 1899), and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares hereinbefore set forth and accordingly have hereunto set our hands and seals this fifteenth day of March, A. D. 1913.

Francis S. Bangs. [Seal.]  
James P. Winchester. [Seal.]  
William J. Maloney. [Seal.]

In the presence of  
Lambert J. Foulk.

STATE OF DELAWARE,  
County of Newcastle,

ss.

Be it remembered that on this 15th day of March, A. D. 1913, personally came before me, Lambert J. Foulk, a Notary Public for the State of Delaware, Francis S. Bangs, James P. Winchester and William J. Maloney, all the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.  
Lambert J. Foulk,  
Notary Public.

Lambert J. Foulk,  
Notary Public,  
Appointed April 18th, 1912,  
For four years,  
Delaware.

STATE OF DELAWARE.  
Office of Secretary of State.

I, Thomas W. Miller, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Allis-Chalmers Manufacturing Company," as received and filed in this office the fifteenth day of March, A. D. 1913, at 1 o'clock P. M.

In Testimony Whereof, I have hereunto set my hand and official seal, at Dover, this fifteenth day of March, in the  
[Seal.] year of our Lord one thousand nine hundred and thirteen.  
Thomas W. Miller,  
Secretary of State.

STATE OF DELAWARE,  
Newcastle County.

Recorded in the Recorder's Office at Wilmington, in Certificate of Incorporation Record, Z Vol. 4, Page 163, &c., the 15th day of March, A. D. 1913.

Witness my hand and official Seal.

[Seal.]

A. V. L. George,  
Recorder.

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6 **FOR THE CONVENIENCE OF THOSE WHO MAY BE INTERESTED** in the corporation laws of Delaware we reprint herewith our booklet on "Business Corporations under the Laws of Delaware," which is one of the "Business Corporations" series of booklets issued by this company and dealing with the corporation laws of the principal so-called incorporating States.

## **BUSINESS CORPORATIONS** **under the** **LAWS OF DELAWARE.**

Their Organization, Maintenance and Advantages.

### **I.**

#### **Purposes for Which a Corporation May Be Formed.**

Business corporations are organized under the General Corporation Law for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose other than banking.

### **II.**

#### **Method of Incorporation.**

It is first necessary to prepare a  
**Certificate of Incorporation.**

### **CONTENTS.**

First: The name of the corporation. The name must contain one of the words "association" "company" "corporation" "club" "incorporated" "society" "union" "syndicate" and must be such as to distinguish it from any other corporation engaged in the same business or promoting or carrying on the same objects or purposes in Delaware.

Second: The name of the city or town, county or place within the county in which its principal office or place of business is to be located in the State of Delaware and the name of the resident agent, which may be a natural person or a domestic corporation authorized to act under its charter.

Third: The nature of the business or objects or purposes to be transacted, promoted or carried on.

Fourth: The amount of the total authorized capital stock of the corporation (which shall be not less than two thousand dollars); the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business (which shall be not less than one thousand dollars), and, if there be more than one class of stock created, a description of the different classes with the terms on which they are created.

Fifth: The names and places of residence of each of the original subscribers to the capital stock.

Sixth: Whether or not the corporation is to have perpetual existence, and if not, when existence commences and ceases.

Seventh: Whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent.

Eighth: Any provision desired for regulation and conduct of the business and conduct of the officers of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and stockholders, or any classes of stockholders, provided such provisions are not contrary to law.

## EXECUTION.

The certificate must be signed and sealed by each of the original subscribers, at least three in number. Any adult natural person irrespective of sex, residence or citizenship, may be an incorporator.

### WITHIN THE STATE.

Before any officer authorized to take acknowledgments of deeds.

### WITHOUT THE STATE.

Before a foreign Commissioner of Deeds for Delaware or a Notary Public or before any Chancellor or Judge of a Court of Record, with the seal of said Court attached, or before the Mayor of a City with the seal of the City.

In every case the officer before whom the acknowledgment is taken should affix his seal, but a County Clerk's certificate is not required.

## RECORDING AND FILING.

The original Certificate of Incorporation is filed with the Secretary of State. A copy of the original certificate, certified to by the Secretary of State, is placed for record in the hands of the Recorder of Deeds of the county where the principal office is to be located.

After the recording in the office of the Recorder of Deeds, the signers of the charter from the date of the filing thereof constitute a body corporate, and under the statute recording is necessary to legal existence. Before any business is transacted, however, the incorporators should hold the

### Incorporators' Meeting.

#### HOW AND WHERE HELD.

This meeting should be held at the place designated in the certificate of incorporation as the principal office of the company in Delaware. The usual method is to have all of the incorporators sign a waiver of notice of the meeting. If this is not done, it is necessary either to publish in some newspaper of the county in which the corporation is established, at least two weeks before the meeting, a notice signed by a majority of the incorporators, or two days' notice must be served personally on all of the incorporators.

At this meeting, all incorporators may be represented by proxy. In many cases, persons other than those interested are used as incorporators in order that the parties in interest need not appear. These incorporators hold the organization meeting and then assign their subscriptions to the parties in interest.

## PROCEEDINGS.

At this meeting, by-laws are adopted and directors elected. It is usual to present at this meeting a waiver of notice of assessment signed by all of the incorporators. If this is not done, the directors are required by statute to give thirty days' notice of any assessment on the stock.

After the incorporators' meeting, it is necessary to hold the



## First Meeting of Directors. HOW AND WHERE HELD.

This meeting need not be held in Delaware, but at any place agreed upon, as evidenced by a waiver signed by all the directors, provided the by-laws authorize such meetings to be held outside the state.

### PROCEEDINGS.

At this meeting the officers of the company should be elected, the oath administered to the secretary, the treasurer's bond presented for approval, a resolution passed designating a depository, the officers authorized to file the necessary certificate in any state in which the corporation may desire to do business, and a transfer agent or registrar of the stock should, if desired, be appointed.

If property is to be purchased and paid for by the issuance of the stock, the board should, after adjudging the worth and utility of the property to the company and fixing by resolution its value, pass the necessary resolutions authorizing the purchase and the issuance of the stock therefor.

### III. Directors.

#### ELECTION AND QUALIFICATIONS.

Every director must be a holder in his own right of at least three shares of stock. The directors must be not less than three in number and at least one a resident of Delaware. They are elected for one year and hold office until their successors are chosen and qualify. However, if it be so provided in the certificate of incorporation or any amendment thereof or by a vote of the stockholders, one, two or three classes of directors may be created; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; and of the third class two years thereafter and at each annual election held after such classification and election, directors shall be chosen for the full term as the case may be to succeed those whose terms expire.

### MEETINGS.

The meetings of the directors may be held within or without the State at such times and places as the by-laws provide.

### IV. Officers.

The necessary officers are: A President, Secretary and Treasurer, chosen either by the directors or stockholders, as the by-laws direct, to hold their offices until others are chosen and qualify in their stead. The president must be a director. The secretary and treasurer need not be stockholders or directors. The former must be sworn to the faithful discharge of his duty, and the latter should give bond in such sum and with such surety as the by-laws direct.

The board may appoint an executive committee which shall have such powers as the board may delegate or the by-laws provide.



V.  
Offices.

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The principal and registered office as provided for by statute is located in Delaware and the name of the corporation must be at all times displayed at the entrance. The registered agent, which may be a natural person or a domestic company authorized by its charter to act in this capacity, and upon whom process against the company may be served, is in charge of this office. The agent is custodian of the original or duplicate stock ledger.

VI.  
Expenses.

UPON ORGANIZATION.

**Secretary of State:**

Ten cents for each \$1,000 of authorized capital stock to \$2,000,000, in no case less than .....	\$10.00
Five cents per \$1,000 in excess of \$2,000,000.	
Filing and indexing certificate.....	2.00
Certifying copy (each) minimum .....	5.00

**Recorder of Deeds:**

Recording certificate (determined by length) average.....	7.00
Allowance should also be made for incidental expenses amounting to about \$15.00.	

SUBSEQUENT TO ORGANIZATION.

All business corporations must pay on or before the first day of May an annual license tax based upon the authorized capital stock on the first of January of each year, except certain special classes, such as telegraph, telephone, electric, gas, oil companies, etc., and all companies supplying power of any kind which must report amount of business done in Delaware. If such corporations operate exclusively outside the State they pay no annual tax. The annual tax is as follows:

BASED ON AUTHORIZED CAPITAL STOCK.

Not exceeding	\$25,000 .....	\$5.00
" "	100,000 .....	10.00
" "	300,000 .....	20.00
" "	500,000 .....	25.00
" "	1,000,000 .....	50.00

Excess at the rate of \$25 per million or part thereof.

A corporation showing in its annual report that it is not engaged in any business is required to pay only one-half of the above but in no case less than \$5.00 for any year. A manufacturing or mining corporation 50% of whose capital stock issued and outstanding is invested in mining or manufacturing carried on in the State of Delaware does not pay this tax, and if less than 50% is employed, the assessed value of its real and personal property so used is deducted in the computation of the tax.

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## VII.

### Reports.

#### TO SECRETARY OF STATE.

Ordinary business corporations (except those included in the special classes heretofore enumerated) on or before the first Tuesday of January in each year are required to file a report setting forth the following:

1. Date of its incorporation.
2. The names and addresses of its officers and directors.
3. The location of its principal office in the State of Delaware and the name of the registered agent in charge thereof.
4. Location of its place of business outside of Delaware.
5. Date of next annual meeting for election of directors.
6. Nature of the business of the corporation.
7. The amount of authorized capital stock and the amount of its capital stock actually paid in.
8. The amount of capital stock, if any, invested in real estate in the State of Delaware and the taxes paid annually thereon.
9. The amount of its capital, if any, invested in manufacturing or mining, or both, in the State of Delaware.
10. If exempt from taxation, state reason.

Public utility corporations and those corporations empowered to exercise the right of eminent domain are also required to make a report to the Secretary of State on or before the first Tuesday of January; setting forth the amount of property in Delaware and other special information.

#### Certificate Upon Payment of Capital.

The president with the secretary or treasurer is required upon the written request of any creditor or stockholder to make a certificate stating the amount of the installments or calls paid in cash or by the purchase of property, stating also the total amount of capital stock issued, and shall within thirty days after the making of the certificate file the same in the office of the Secretary of State.

## VIII.

#### Statutory Requirements Subsequent to Organization.

1. The maintenance of a principal office in Delaware with the name of the corporation displayed at the entrance and an agent in charge thereof.
2. Keeping at such principal office either the original or a duplicate stock ledger, open at all times to the inspection of stockholders. At the time of and ten days prior to the annual meeting, an alphabetical list of stockholders entitled to vote must be on file at the office where such election is to be held.
3. All stockholders' meetings must be held at such place within or without the State of Delaware as may be provided for in the by-laws. Stockholders' meetings for the election of directors are required to be held annually. At all meetings stockholders may be represented by proxy.
4. The holding of a directors' meeting immediately following the annual stockholders' meeting for the election of officers. This meeting may be held without the State, as the by-laws provide.
5. The filing of the report with the Secretary of State on or before the first Tuesday of January each year.
6. The payment of the annual franchise tax on or before the first day of May, after which date interest at the rate of one per centum per month must be paid.
7. One director of every corporation must be an actual resident of the State of Delaware.

## IX.

### By-Laws.

The by-laws are for the government and regulation of the members of the corporation and are not binding upon third persons without notice.

The power to make and alter by-laws, which rests by statute with the stockholders, can by provision in the certificate of incorporation, be conferred upon the directors, but by-laws made by the latter may be altered or repealed by the stockholders.

## X.

### Issue of Stock for Property.

The statute provides that subscriptions to or purchases of the capital stock of any corporation organized or to be organized under any law of the State may be paid for wholly or partly by cash, by labor done, by personal property or by real estate or leases thereof, and in the absence of actual fraud in the transaction the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

The constitution provides that "No corporation shall issue stock, except for money paid, labor done or personal property, or real estate or leases thereof actually acquired by such corporation."

## XI.

### Preferred Stock.

Every corporation has power to create two or more kinds of stock of such classes, with such designations, preferences, voting power, restrictions or qualifications as shall be stated in the certificate of incorporation.

Preferred stock may be cumulative or non-cumulative and subject to redemption at a fixed time and place at not less than par. If preferred as to dividends, the rate must not exceed eight per centum per annum, before any dividend is set apart or paid to the common stockholders. In no event is a holder of preferred stock personally liable for the debts of the corporation. Preferred stock may be created which has no voting power. At no time shall the total amount of preferred stock exceed two-thirds of the actual capital paid in cash or property. Preferred stock may be converted into common stock by so providing in the certificate of incorporation.

## XII.

### Voting Trusts.

There is no statutory provision for voting trusts. It is probable that the Delaware Courts would follow the New Jersey decisions. The following gives the trend of the courts in that State:

"The pooling or combining of stock is not necessarily illegal or void as against public policy where it is the intention to carry out a particular scheme with a view to furthering the interests of all stockholders. The grant should be revocable, should affect all classes of stock involved alike, and 'the propriety of the object validates the means and must affirmatively appear.'" (Chapman v. Bates, 61 N. J. Eq. 667.)

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XIII.

**Voluntary Dissolution.**

The filing of a certificate by the incorporators surrendering all corporate rights before beginning business is sufficient to dissolve a corporation. If, however, the stock has been issued and business commenced, a stockholders' meeting must be held in response to a call, published once a week for four weeks, issued by the board of directors. The consent in writing of two-thirds of the stockholders must be given and filed with the Secretary of State and notice of this filing must be similarly published. At the completion of this procedure, the corporation is dissolved. If all the stockholders consent in writing, it is unnecessary to hold a stockholders' meeting.

XIV.

**Foreign Corporations.**

The statute provides that it is not lawful for any company organized under the laws of any other State to do business in Delaware through or by branch offices, agents or representatives located in the State until it shall have filed certain papers with the Secretary of State. Any foreign corporation transacting business without first having complied with the law applicable to foreign corporations is guilty of a misdemeanor and can be fined not less than \$200 nor more than \$500 for each and every offense. Any agent of a foreign corporation transacting business without having complied with the statute shall be deemed guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each and every offense.

A foreign corporation in Delaware is required to file with the Secretary of State a certified copy of its charter and a certificate giving the name or names of its authorized agent or agents in the State together with a sworn statement of the assets and liabilities of such company or corporation, and the Secretary of State will deliver to such agent or agents a certificate authorizing the carrying on of business in the State. The fee for filing the certificate is \$50 and \$10 for certifying the copies of the certificate for filing with the prothonotary of the Superior Court of Delaware in each County of the State.

XV.

**Advantages.**

The General Corporation Act of Delaware presents the following principal advantages:

1. Simplicity in organization and management.
2. No formalities are demanded by statute previous to the filing of certificate of incorporation.
3. There are no restrictions upon the powers of business corporations.
4. Incorporators' and stockholders' meetings may be held by proxy, and stockholders may meet out of the State if the by-laws so provide.
5. Cumulative voting is permitted.
6. Directors' meetings may be held without the State.
7. Only one director need be a resident of Delaware.
8. There is no maximum limit upon capitalization.
9. Great latitude is allowed in the creation of classes of preferred stock.

10. Bonds may be issued to any amount and are not taxed and may have voting power if stated in charter.

11. The State requires no report upon the business condition of a corporation.

12. The method of taxation, which bases the annual tax upon the stock authorized does not necessitate inquiry into or report upon the intimate affairs of the corporation.

13. Stockholders, officers and directors are not liable for corporate debts.

14. There are no restrictions as to the amount of indebtedness that may be created, nor is the stockholders' consent required.

15. Corporations are specifically authorized to hold securities of other corporations.

16. There is no limitation upon the holding of real and personal property.

17. The organization fees, while low, are not such as to attract irresponsible corporate enterprises.

18. The rate of annual franchise tax compares most favorably with any of the leading charter-granting States.

19. The Courts of Delaware have in a majority of cases closely followed the ruling of the New Jersey Courts, the laws of the two States being very similar.

20. Directors may be divided into one, two, or three classes.

21. When a company is not actually engaged in business, its annual tax is reduced by one-half, if the annual report so indicates.

22. With the exception of the president, no other officers need be either directors or stockholders.

23. Stock may be issued for labor done, personal property, real estate, or leases, as well as for cash, at par, and in the absence of actual fraud the judgment of the directors as to the value of such labor or other property is conclusive and stock so issued is full paid and not subject to further call.

### The Corporation Trust Company.

For the convenience of members of the bar in handling their Delaware corporation business: The Corporation Trust Company

1. Maintains in Delaware a statutory office for corporations.

2. Acts as registered agent within the State upon whom process may be served.

3. Keeps the original or duplicate stock ledger in the form required by law.

4. Provides a resident director if desired.

5. Furnishes rooms for stockholders' and directors' meetings.

6. Conducts meetings and furnishes inspectors of election.

7. Files the annual report.

8. Refers questions concerning each corporation to its duly appointed attorney and informs him of changes in the law or important decisions affecting corporate interests.

As an assistance at the time of organization, the company will be pleased to ascertain if a name can be used and to advise the attorney.

Copies of certificates of incorporation of leading industrial organizations, approved stock certificates and official forms are on file for reference. The company will also furnish incorporators and file incorporation papers with the proper officials, hold the organization meeting and furnish minutes thereof.

Many attorneys, being at too great a distance from Delaware to warrant attending personally to the details, but wishing to keep complete control and supervision over the organization, have found the following

method convenient and expeditious: Upon receipt from the attorney of sufficient data, the Trust Company submits a copy of the proposed charter and other organization papers with an estimate of fees and disbursements. The attorney then approves the charter, and authorizes the filing of the papers and the holding of the necessary meetings. When the organization is completed, the minutes will be prepared in book form.

The Corporation Trust Company does not present its system of corporate organization and registration as a new and untried proposition, but as a result of the accumulated experience it has gained since its organization in 1892. Since that time it has assisted counsel in the organization and licensing of many thousands of corporations, and its corporation business has become the largest and most extensive in the country.

At present the Company is co-operating with the leading corporation lawyers of the American Bar, and their confidence and good will have been gained by our policy of dealing exclusively with counsel and not interfering between counsel and client.

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**THE CONSEQUENCES OF FAILURE TO OBTAIN AUTHORITY TO DO BUSINESS** on the part of a foreign construction company in Alabama is again brought to attention by a recent case.

Several years ago, the Talley-Bates Construction Co., a Tennessee corporation, entered into a contract in Chicago by which it understood and agreed to build a railroad in Alabama for the Alabama Western Railroad Company. It entered into contracts at Memphis, Tennessee, with sub-contractors. The sub-contractors performed a large part of the work and continued to do so until the railroad company refused to pay installments as agreed. Thereupon the Talley-Bates Company ceased work under the contract and brought suit upon the balance due upon the work done. The defendant railroad company averred that the plaintiff was a foreign corporation doing business in Alabama without a license and therefore could not recover. The contracting company demurred on the theory that the work in the state had been done entirely by independent sub-contractors, who were not its agents. On appeal, the Supreme Court of Alabama held that the terms of the contract precluded any such contention in that it provided that the contracting company should have immediate charge and responsibility for the work, no part should be sublet without consent of the railroad company, and in case of such consent the sub-contractor should be considered as the agent of the contracting company, which should still remain liable as if no subletting had been made. The court thought that the entire contention turned on the merits of the word "independent" and that in this case it did not alter the relation of principal and agent between the contracting company and its sub-contractors. The contracting company was held to have been engaged in business in the state, but the contract entered into in Chicago was not held to be void ab initio, because the statute had not been complied with before it was executed. If the contracting company had complied with the statute and obtained a permit to do business before it actually engaged in the execution of the contract in Alabama, such compliance would have been sufficient, but failing to do this, the defendant had a right under the law to renounce the contract then or at any subsequent time, as for a breach by the plaintiff. (Alabama Western R. Co. v. Talley-Bates Const. Co., 50 So. 341, 1909.) One of the sub-contractors subsequently sued the railroad company for the value of the work and labor done by him. The court holds that there is no principle in law or equity which would require the railroad company to pay the sub-contractor for work done by the latter for the construction company. The sub-contractor's remedy is against the construction company as the express contract between them excluded any

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implied contract between the sub-contractor and the railroad company. The fact that one of the engineers of the railroad company told the sub-contractor to continue and that the railroad would pay him raised no implied promise on the part of the railroad company, the engineer having no real nor apparent authority to bind it as surety for the contracting company. (Alexander v. Alabama Western R. Co., 60 So. 295.)

The rule in Alabama as laid down in the Talley-Bates case above referred to seems to be that when a contract is entered into by a foreign corporation with a view to being executed in Alabama, a promise to comply with the foreign corporation laws of Alabama before entering upon its execution is implied as an essential and necessary element of the contract, if it is to be sustained and enforced as a valid agreement.

**A RECENT CASE IN BRITISH COLUMBIA**, before the Supreme Court of that Province, holds again that the Province has the right to impose conditions on companies organized under the Dominion Companies Act, as a prerequisite to doing business in the Province. One of the vexing questions in Canada is that of how far the Provinces may impose conditions on a company incorporated by the Dominion, with authority to do business throughout Canada. The Provinces, with one or two exceptions, impose practically the same conditions on Dominion companies as those imposed on other foreign corporations. The question of the respective constitutional rights of the Provincial and Dominion governments in this respect is now before Canada's highest tribunal. The British Columbia Court also held that a foreign corporation is "doing business" in the Province if any person in the Province is acting for the corporation "in any capacity." It need not be as agent or representative. Because the company failed to obtain a license it could not maintain the action. (John Deere Plow Co. v. Agnew 8 D. L. R. 65.)

**AN ARIZONA CORPORATION** with its principal place of business in California had a stockholder who wished to inspect the mine of the company, located in Arizona. The Supreme Court of California held that notwithstanding that the physical property to be examined was in another jurisdiction, it could issue a writ of mandamus requiring the directors to order their mine superintendent in Arizona to permit inspection of the mine. The court reasoned that the corporation held its directors' meetings in California, its directors resided there, and the corporate business, in part at least, was done there. The corporation, although organized under the laws of Arizona, was for many purposes a resident of California. Its directors acting in that state could make and deliver to the plaintiff an order to the persons in charge of the mine, instructing them to permit the plaintiff to enter and examine the same. In the ordinary course of business it is to be presumed that such an order would be made in California rather than in Arizona, since the directors and officers reside there and hold meetings there. Consequently there was no physical or jurisdictional obstacle to prevent the issuance and execution of a writ of mandate to compel the defendants to perform such an act. The court also holds that the rule of common law permitting the inspection of corporate books by stockholders, also extends to the inspection of corporate property as fully as to books. (Hobbs v. Tom Reed Gold Mining Co, 129 Pac. 781.)

**APPOINTING AN AGENT FOR SERVICE OF PROCESS** is one of the prerequisites to "doing business" in Indiana. A foreign corporation which has appointed such agent may subsequently revoke his appointment and withdraw from the state, if the corporation actually ceases doing business in the state, although there is no statutory provision for such withdrawal. But service of process on such agent even after his appointment has been revoked is good service in an action on a contract made in the



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state while such corporation was "doing business" in the state. In a suit growing out of such business the corporation will not be permitted to defeat the jurisdiction of the court by a plea that service was insufficient on account of the revocation of the agent's authority. The appointment of the agent in effect continues so long as any liability remains against the corporation growing out of the business done by it under its license, or until another agent is appointed in his place. (*Brown-Ketcham Iron Works v. Geo. B. Swift Co.*, 100 N. E. 584.)

**REPRESENTATIONS BY DIRECTORS** as to any extrinsic fact affecting the value of the stock of corporations may be relied upon by the purchaser and if he does so and the assurances are fraudulently made to induce him to make the purchase, he may sue for damages sustained. (*Van Slochem v. Villard*, 138 N. Y. Supp. 852.) In quoting from *Ellis v. Andrews*, 56 N. Y. 83, 15 Am. Rep. 379, the court said: "Upon the question of value the purchaser must rely upon his own judgment and it is his folly to rely upon the representations of the vendor in that respect; but in regard to any *extrinsic* fact affecting the quality or value of the subject of the contract he may rely upon the assurances of the vendor \* \* \*." Farther on in the opinion the court says: "The disposition of the present day is to hold directors of corporations to a strict accountability for false statements made for the purpose of inducing the public to purchase stocks at much more than their real value \* \* \*. It is not our purpose to relax the rule in that respect."

**"DOING BUSINESS" IN NEW YORK.** A foreign corporation may have an office in that state for the purpose of collecting news and soliciting contracts for advertisements and for certain trade reports without being held to be "doing business" in the state, if the orders are sent to its office outside the state and filled from there. The mere renting of such office does not constitute an investment of capital in the state. (*Am. Contractor Pub. Co. v. Michael Nocenti Co.*, 139 N. Y. Supp. 853.) A foreign corporation which sends its product into the state for sale through a commission merchant, who transacts the business, makes the sales, and receives the consideration is not "doing business" in the state, so as to require it to obtain a certificate of authority. (*Brookford Mills, Inc. v. Baldwin*, 139 N. Y. Supp. 195.)

**PERSONAL LIABILITY FOR DECLARING DIVIDENDS** based on erroneous treasurer's statements was imposed on directors in the recent case of *Cornell v. Seddinger*, 237 Pa. 389, where the lower court in placing the responsibility only on those directors who were also officers with full knowledge of its affairs said:

"It may be regarded as settled law, that directors of a corporation are trustees, or quasi-trustees of the capital of the company, and liable as trustees for any breach of duty with respect to the application of it. The capital of a company may not lawfully be used for the payment of dividends. It was so used in the present case . . . . But, three of the members of the board were not practical shipbuilders, or were not personally familiar with the process of construction, and therefore they were excusable for accepting the reports at their face value without further inquiry."

On appeal where counsel for defendant urged the impossibility for any man in a large corporation to ascertain the correctness of reports of subordinates and pleading the necessity in large enterprises for a delegation of duties, the lower court was reversed in dismissing the bill as to the three directors in an opinion written by Mr. Justice Potter, who said:

"The failure of the directors to investigate the character of the items of the report, led them to declare dividends when

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there was no surplus or profits to divide. This action was not merely an error of judgment, but was the result of lack of attention to the real condition of the company. Mere ignorance of facts which they could easily have ascertained cannot excuse them for the performance of the illegal acts, in declaring dividends out of capital. It was the duty of the directors to inform themselves as to the actual condition of the company before declaring dividends. If they had made full inquiry and reasonable examination, and had been misled by erroneous information on which they had the right to rely, that might have served as an excuse for distributing capital instead of profits but nothing of the kind appears from the evidence."

**JURISDICTION**, by mandamus, to compel directors of a foreign corporation to permit a co-director to examine its records, books and documents within the jurisdiction of the Court was decided in the affirmative in the recent case of *Machen vs. Machen & Mayer Electrical Mfg. Co.*, 237 Pa. 212, where Mr. Justice Mestreszat in answer to the Appellee's objection that the exercise of power by the Court would be to interfere in the management of the internal affairs of a foreign corporation said:

"There is no demand for relief against the corporation but against its directors and officers who are . . . . within the jurisdiction of the Court . . . . We are at a loss to see how granting relief sought in this proceeding will regulate or interfere in any way with the internal affairs of the corporation . . . . The books desired and the officers and directors having custody of them are within the jurisdiction of the Court, and a foreign court could not grant the relief which the plaintiff seeks and to which he is entitled. It would be worse than idle to compel the plaintiff, a citizen of this state, to go to the domiciliary jurisdiction to seek the relief he asks here."

**THE LIABILITY OF PROMOTERS.** The Court of Civil Appeals of Texas lays down the rule that promoters who, in contemplation of the formation of a corporation, make contracts and incur liabilities in its behalf are personally liable, unless it is expressly stipulated and agreed that they shall not be so held, and the mere fact that the corporation when organized assumes the liability does not release the promoters. (*Bradshaw v. Jones*, 152 S. W. 695.)

**A PENALTY IS IMPOSED ON WEST VIRGINIA CORPORATIONS** by an act approved February 22, 1913, for transferring shares of stock standing in the name of a decedent without first notifying the State Tax Commissioner at least fifteen days prior to such transfer. The Inheritance Tax Law as amended provides, among other things, that shares of capital stock of all corporations organized and existing under the laws of West Virginia, the certificates of which shares of stock shall be within or without the state, shall be subject to the Inheritance Tax, and that no corporation organized or existing under the laws of this state shall transfer any such shares of stock, unless notice of the time of such intended transfer is served upon the State Tax Commissioner at least fifteen days prior to such transfer, or until the State Tax Commissioner shall consent in writing thereto. Any such corporation making the transfer of any such shares of stock before the inheritance tax is paid, or before obtaining the consent of the State Tax Commissioner thereto, shall be liable to the State of West Virginia for said tax together with any interest that may accrue thereon, and in addition thereto a penalty of five hundred dollars; which liability for such tax and interest and penalty may be enforced by a proper action in the name of the State of West Virginia.

**A CONTRACT MADE BY AN UNLICENSED FOREIGN CORPORATION IN WISCONSIN** is voidable at the election of the party dealing with the corporation. It is wholly void on behalf of the corpora-

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tion or its assigns. It cannot be enforced against the other party thereto, but is enforceable against the corporation or its assigns. This, the Supreme Court of Wisconsin reiterates, is well settled in that state. (*Lanz-Owen & Co. v. Garage Equipment Co.*, 139 N. W. 393.)

**THE WALTHAM WATCH COMPANY** is the owner of patents covering watch movement frames, spring barrels for watch movements and dial holders for watch movements which are used in their "16 size Riverside Movements." These movements have been sold in packages containing "a contract notice" intended to be accepted by the buyer as an agreement with the company. The contract notice required that jobbers should sell to retail watch dealers, except those designated by the company, and to no other persons, and only at the prices authorized by the company, and that retail dealers should not advertise or sell the movement for less than a stated price. Similar "Conditions of Sale" were made part of all invoices from the company to the jobbers and from the jobbers to retailers. One Keene, a retailer, bought the movements from jobbers in the open market and sold them at prices less than those fixed by the company. The company sought to restrain him. The court held that the watch company received its "tribute" for the patents when it sold the goods to the jobbers and that after putting the article on the market for sale by selling to jobbers and dealers, who purchased for such purpose and paid the full price fixed, it could not still limit and restrict them in the price they should charge and receive for their own property. (*Waltham Watch Company v. Charles A. Keene*, U. S. District Court, S. D. N. Y.—not yet reported.)

**FAILURE TO FILE THE RETURN OF NET INCOME** subjects corporations to two penalties: one a fine ranging from \$1,000 to \$10,000 and the other a penalty of 50% of the amount of tax due from the corporation. The fine may be compromised under the Internal Revenue law, offers as low as \$10 or \$25 being accepted by the government if justified by the circumstances. The Commissioner of Internal Revenue held, however, that the 50% penalty could not be so compromised. On March 3, 1913, Congress passed an act authorizing the Commissioner of Internal Revenue to remit, abate or pay back all such additional taxes in excess of \$100 for any single year whenever it appears to his satisfaction that the additional tax was assessed or imposed solely because of neglect to make a return at the time specified in the act, without any intention or design to hinder or delay the government in the collection of the tax originally assessed. Claims for abatement or refunding of additional taxes paid heretofore must be made within one year after the passage of the act on Forms 47 or 46, respectively, which may be obtained from any collector of internal revenue. The claim should be filed with the collector of the district in which the tax was assessed or paid and should be accompanied by an affidavit by the president, vice-president, or other principal officer, and the treasurer or assistant treasurer, stating specifically that the neglect to make the annual return at the time required by law was without any intention or design on the part of any officer of the corporation to hinder or delay the United States in the collection of the tax originally assessed, and setting forth in detail the cause or causes which produced the delay in filing the said return in the time and manner prescribed by law. (T. D., 1838.)

**THE 1913 LEGISLATURES ARE ADJOURNING.** Many new laws have been passed affecting corporations. These laws will not appear in the statute books for several months. Yet many of them go into effect immediately. Those whom they affect are presumed to know their provisions. Copies of new laws on any subject in any one or more of the states can be furnished by our Legislative Department as soon as approved by the Governor or immediately if they have already been ratified or approved. Inquire at any of our offices for further particulars.

# The Corporation Trust Company System

## DIRECTORS

Oakleigh Thorne  
Harry B. Hollins

George R. Sheldon  
Wm. H. Chesebrough

John W. Griggs  
Kenneth K. McLaren

## OFFICERS

Kenneth K. McLaren, President  
Geo. R. Sheldon, Vice-President  
Raymond Newman, General Manager  
Horace S. Gould, Secretary  
B. Stafford Mantz, Treasurer  
Frank W. Black, Auditor  
George E. Holmes, Assistant Secretary  
John R. Turner, Assistant Secretary  
Sidney A. Anderson, Assistant Auditor  
Thomas F. Barrett, Manager, Legislative Department  
George C. Holton, Attorney

William R. Watson  
Chicago Secretary  
James E. Manter  
Portland Secretary  
William J. Maloney  
Wilmington Secretary  
Carroll C. Robertson  
Pittsburgh Secretary  
J. Disbrow Baker  
Philadelphia Secretary

Norman J. MacGaffin  
Boston Secretary  
Joseph C. Cannon  
St. Louis Secretary  
Frank A. Kuntz  
Camden Secretary  
Warren N. Akers  
Washington Secretary  
S. R. Harbert, E. J. Chappell  
London Secretaries

## OFFICES

37 Wall Street, New York  
511 Exchange Building, Boston  
(Corporation Registration Co.)  
281 St. John Street, Portland, Me.  
394 Du Pont Bldg., Wilmington, Del.  
(Corporation Trust Co. of America)  
1639 Oliver Building, Pittsburgh

112 West Adams Street, Chicago  
15 Exchange Place, Jersey City  
1428 Land Title Bldg., Philadelphia  
922 New Bank of Commerce Bldg.,  
St. Louis  
501 Colorado Bldg., Washington, D. C.  
304 Market Street, Camden, N. J.

ENGLAND  
London, E. C., 95 Gresham Street

# Corporations Organized Under the Laws of Delaware

are required to keep a principal office within the state in charge of an agent upon whom process may be served, and at which certain records must be kept.

Attorneys will find excellent facilities at our Wilmington office.

By means of its assistance attorneys can complete the details of incorporation in the minimum of time.

Attorneys dealing with our Wilmington office from a distance may handle their matters through the medium of any one or more of our offices in the principal cities. This is one illustration of the efficiency of our service.

**THE CORPORATION TRUST CO. OF AMERICA**  
394 DuPont Building Wilmington, Delaware

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THE COMPANY FOR LAWYERS

Established 1892.

## The Corporation Trust Company

### SYSTEM

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304 Market Street, Camden N. J.



March 24, 1913.

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## If Companies Av

*It Has Been Said That New Concerns Will Go to Other States More Lenient Than New Jersey Under Its New Laws, and That Some Companies Now Domiciled There Will Go Elsewhere—Governors of Four States, Denying Laxity in Their Laws, Outline the Policy of Their Commonwealths Toward Corporations*

SINCE New Jersey, which has been known as the Mother of Trusts, enacted Mr. Wilson's so-called "seven sisters" bills it has been reported that some corporations were likely to leave that State and seek charters elsewhere.

Among the States mentioned as likely to be sought as asylums by companies which felt too great restriction under the newly enacted laws of New Jersey are Delaware, Maine, West Virginia, and Arizona. The Annalist inquired of the Governor of each of these States what his State's policy was toward the admission of corporations under these conditions.

George W. P. Hunt of Arizona

the impression



# void New Jersey

perfectly legitimate, but desire to encourage the organization of corporations for legitimate and proper business.

The domestic companies organized under our laws have excited no unfavorable criticism among the people of this State, and the number of such companies is largely in excess of those chartered to do business out of the State. The same laws govern the chartering and organization of both the resident and non-resident corporation. While our laws may not be as perfect as desired, I feel they are more than well drawn and considered, both for the protection of corporate business as now constituted and for those with whom such business is transacted.

I feel they are in harmony with the best business thought of the country and are safely safeguarded.

Gov. Charles R. Miller of Delaware says that while no changes in the law of his State will be made to induce concerns to incorporate there, Delaware's policy is to encourage the incorporation of legitimate business undertakings. He said:

The general corporation law prescribed by the Constitution of the State of Delaware has been framed with painstaking care by the most able lawyers of the State, and safeguards the State and the interest of the public and of persons incorporating thereunder. This law has been interpreted by our courts with the view of maintaining such safeguards. It is not the policy of this State to discourage the incorporation of legitimate business enterprises under our laws. No changes in the laws of the State will be made to induce persons to incorporate in Delaware.

...the words of Gov. William

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